

Basic income and the justice of taxation

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Basic Income and the Justice of Taxation

Revised paper of the 7th International Congress on Basic Income, Amsterdam, 10-12 September 1998.¹

A basic income system (**BIS**), Philippe van Parijs once wrote, is "a disarmingly simple proposition"². In this paper I would like to link it with another disarmingly simple proposition, a tax system that has value added tax (**VAT**) as its main source. Joining two such simple propositions suggests boundless naivety. However, if social security can be reduced to such simplicity, why not taxation also? After all, a basic income is a negative form of taxation and one cannot simply overlook the question of its relation to positive taxation³.

¹ I thank my colleagues Hans Crombag and Frank van Dun for the comments they have made to an earlier draft of this paper. P. Carson has been so awfully kind to confront me once more with my handicaps when writing in English.

² Philippe van Parijs, Een reëel-liberale rechtvaardiging van het basisinkomen, in: J.W. de Beus & Percy B. Lehning, **Beleid voor een vrije samenleving**, Amsterdam-Meppel 1990 (Boom), p. 130.

³ The combination of BIS and VAT was an idea which I had played with in 1995 when the basic income discussion was at a peak in The Netherlands. I had written a paper on the subject which was discussed in a seminar by my colleague in fiscal law, who, I had the impression, must have thought that he had just read a fiscal version of Alice in Wonderland. I was very surprised to discover, rather recently, that there already exists a Belgian political party, "Vivant", which has the combination of BIS and VAT as its main programmatic issue. I have no connection whatsoever with this party, whose advocacy for these ideas is based, as far as I can see, on purely pragmatical grounds, the importance of which I do not deny. I do not think, however, that a more principled approach can be missed. Not only can a more principled approach put these social-economic issues in a wider context, it can also have consequences which are in conflict with a purely pragmatic approach. Thus, Vivant rejects submitting labour to VAT. It discriminates between consuming capital and labour in production believing that this will stimulate employment. The latter is debatable, but such a discrimination is certainly unprincipled.

Starting with a **methodological** section, the first question to be considered is why lawyers and legal philosophers as such have shown little interest in BIS so far. This is regrettable since it has hardly occurred to the proponents of BIS have to deal with it within a systematic treatment of the principles of taxation.

The next question will be whether BIS is exceptional as a negative form of taxation. Our discussion will show that all forms of positive taxation have an equivalent in negative forms.

The suggestion that BIS might be exceptional, is created because it would seem to violate the fundamental principle of equal fiscal charges. It enables people to enjoy free time without any obligation to produce taxable income if they are capable of doing so. This objection cannot simply be bypassed even if it were true, as some proponents of BIS have suggested, that it provides the most efficient solution of the present problems of unemployment.

The second section is about the justification of BIS as an **individual right**. Although the subject is more than sufficient for an independent paper, it is too essential to be left out when dealing with the justice of taxation. Both BIS and the justice of taxation are directly linked to the political philosophy one takes as one's starting point. Van Parijs' theory is at present the most elaborated philosophy of BIS. It represents what I propose to call the "fairness-approach". One of the virtues of Van Parijs' theory is that it deals with forms of taxation in so far, at least, as the financing of BIS is concerned.

The criticism that Van Parijs' theory has already met, has demonstrated that it is much too artificial, complex and debatable as a foundation of BIS. However, its main defect, it has been argued, would seem to be that it contains no convincing grounds to reject the principle of self-provision (the **PSP**) for everybody able to do so. I will suggest how Van Parijs' theory can be protected against this criticism to a certain extent. However, that protection is of a doubtful nature in so far as one will have to give up the ahistorical-modernist frame of reference of the fairness-approach.

Govaert Den Hartogh, who does not reject PSP, has suggested a convention-theoretical approach to BIS⁴. He nevertheless

⁴ Govaert den Hartog, 'Het basisinkomen als grondrecht', in: Robert J. van der Veen en Dick Pels (red.), *Het Basisinkomen. Sluitstuk van de verzorgingsstaat?*, Amsterdam 1995 (Van Gennep), pp. 125-155. Regretfully, his article is only availa-

assumes that fairness is the solution for dealing with the problem that natural sources have no "natural" owners. I will argue that this is a serious mistake, because the theory of conventions is about processes in time and must have both logical and empirical support. Having reverted to fairness, Den Hartogh uses two idealist assumptions to circumvent PSP, both of which are unconvincing.

In a third approach, a republican-democratic one, PSP is also not rejected. It argues for BIS as a citizen's compensation for fulfilling republican duties. It will be argued that this approach cannot justify overriding PSP in cases where people fail to fulfil those duties or where they can do so and respect PSP nevertheless.

My own approach is also of a political-theoretical nature, but it relies on convention-theory. It is based on a theory of "law as second-order morality" (**LSOM**). In that theory law is seen as a device for people who prefer to live in peace with all those who are willing, for whatever reason, to accept a position of moral relativism. Following this approach, BIS can be explained as a pay-off for rights of political domination, however democratic the latter may be. The recognition of exclusive property rights in natural resources will be shown to be just an aspect of these political rights.

The third section of this paper contains an analysis of the ***incoherence of the prevailing systems of direct taxation***. The outcome of that analysis will be that consumption-tax, and more in particular, VAT is the right and only justifiable form of (pure) taxation.

The fourth section is about the ***coherence between BIS and a VAT-system*** (hence: VATS) within LSOM.

The fifth and final section is concerned with the ***administrative advantages and problems of VATS***.

I. Basic income and basic questions

1. Legal scholarship and BIS

Law is divided into an ever increasing number of branches. Specialisation in the study of law has grown accordingly.

ble in Dutch. However, the argument has been developed very much in a dissertation written under his and Robert van der Veen's supervision by Gijs van Donselaar, *The Benefits of Another's Pains. Parasitism, Scarcity, Basic Income*, Amsterdam 1997 (Leopold/Elzinga).

Moreover, the philosophy of law has failed to compensate for this process of differentiation by developing integrating theories. This failure is not a recent phenomenon. As I have argued in a recent article⁵, the philosophy of the criminal law, for instance, has been struggling with its separation from political philosophy for more than two hundred years. The philosophy of tax law, is another case in point. Professional philosophers of law tend to remain at a level of generality and abstraction from which they do not have to deal with the seemingly technical and pragmatic concerns of fiscal-legal scholars, who concentrate on positive law and not on law as it might or should be.

The discussion concerning BIS illustrates this. It is striking, for instance, that the discussion has been almost totally ignored by legal philosophers, but also by legal specialists as such. They suppose it to be a matter for politicians and economists. This is also remarkable because the discussion about the differences between a system of negative income tax and BIS has shown how closely connected technical and more principled matters are. In contrast to BIS, a negative income tax system implies that people are supposed to pay income tax, that the state has a direct right to be informed about personal income, and that an effort to provide for oneself, even if only by borrowing money, has to precede the payment of a negative income tax. The latter implies, again, that one has to involve others in one's deplorable financial situation and that one will depend on private or state altruism, control and more or less subtle moral censorship. But these are only examples of the more superficial legal philosophical aspects of BIS. In this paper, it will be demonstrated that some of the most fundamental questions about law are involved with it: the justification of property rights in natural resources, the justification of political power, the foundations of social security and the justice of fiscal charges and expenditure.

The distance of legal philosophers and fiscal specialists from discussions concerning BIS, is mirrored by the distance that proponents of BIS have kept from the normative principles of taxation. They are usually weary of the control over the life of the unemployed and the costs of such interference that accompanies existing systems of public social security. However, they do not seem to mind much that fiscal authorities can also scrutinize and manipulate the life of citizens who provide for themselves. In other words, so far proponents of BIS did not consider its justification in the light of more general questions concerning the principles of taxation. Just as proponents of a negative income tax system tend to think of

⁵ N.H.M. Roos, On Crime and time, in: F. Ost (ed.), Time and Law. Is it the Nature of Law to last?, Bruxelles 1998 (Bruylant), pp. 385-424.

the difference between their proposal and BIS as no more than a fiscal-technical matter, proponents of BIS are inclined to think that the deontological structure of the main part of the fiscal iceberg is irrelevant for its justification. At best, as in the case of Van Parijs, for instance, they focus on the taxes that would seem to be justified from the background theory they use for BIS. However, how these forms of taxation fit in with its general principles, is a question that does not seem to worry them⁶.

2. Forms of taxation

Positive taxes can be direct or indirect. Direct taxes are paid by the owner of the financial source that is subject to taxation. Income tax and property tax are examples of direct taxes. Indirect taxes are paid by the buyer of goods or services that are being taxed. VAT and ECO-tax are examples of indirect taxes. They are direct in an economic sense, because they are mark-ups on prices. Conversely, direct taxes have indirect economic effects. They become hidden in prices as there is no direct relation with the size of the indirect tax component in goods or services and their prices. If I produce goods with high labour costs but the market does not live up to my expectations, their price may even be lower than the income tax-component in the wages of the people who worked for me.

Positive taxes can be distinguished from public charges. The latter can be of three kinds. They can be payments for public goods or services an individual profits from specifically, e.g. the price of a ticket for a public museum. They can also be a price supposedly compensating the costs of specifically public services, like the costs of a passport. A third possibility is that they represent the price for a privilege, e.g. the right to sell goods in a public market. This latter form of charging is part of the means of regulating economic competition for goods owned by the state.

Finally, positive taxes can be pure or impure ones. Pure taxes have the acquisition of fiscal revenue for their primary purpose, independently from what other positive or negative effects they may have on other policy goals. By contrast,

⁶ An example in point would be A.B. Atkinson's, *Public Economics in Action*, The Basic Income/Flat Tax Proposal, Oxford 1995 (Clarendon). He does not even raise the question whether income tax can be justified and how it has to be related to the justification of BIS, but simply explores if and with what economic effects it might be financed from a flat income tax.

impure taxes have a non-fiscal primary purpose. They are means of socio-economic regulation. VAT is an example of a pure tax. ECO-tax, which aims at a more efficient use and protection of the natural environment, is an example of an impure form of taxation. In reality, the distinction between pure and impure taxes is more an ideological matter. For instance, an impure tax like excise-duties on tobacco-products is very inefficient as a means to prevent smoking, its pretended main justification, but a very efficient means of extortion of smokers for fiscal purposes⁷. On the other hand, income tax does not only have the purpose of raising fiscal revenue, it is also an instrument for redistributive and macro-economic goals.

I will totally leave aside impure taxes and charges. A lot might be said about a lack of justification in some instances. However, in other ones they can be perfectly justified.

3. Positive and negative taxation

Negative taxation is a concept that refers to an obligatory payment by the state to a citizen that is not based on private law. It is not currently used concept except in connection with BIS. This might suggest that it is an exceptional. To see whether this is true, one must investigate whether the various forms of positive taxation have counterparts in negative taxation.

The distinction between direct and indirect forms of taxation would also seem to make sense when applied to negative taxation. A basic income is an example of a direct form of (negative) taxation. A subsidy on "green" products is an example of an indirect form. The two examples also illustrate the meaningfulness of a distinction between pure and impure negative taxation.

Does the distinction between pure and impure taxes also make sense when applied to indirect taxes alone? Yes, an example is a government that provides poor people with food stamps instead of with money in order to try and prevent social security money being spent on products that they believe to be bad or less useful for the poor.

How about the distinction between taxes and charges? Negative charges are payments for specific goods or services that a citizen is under an obligation to deliver to the state, or payments for the voluntary production of goods and services the market is supposed not to supply spontaneously in suffi-

⁷ Smoking is cost-efficient even when the costs of smoking-related diseases are taken into account. Nothing is as expensive as people reaching old age.

cient quantities. An example of the first sort of charges is payment for dispossessed property (compensation for a particular sacrifice of an individual's rights on behalf of the state) or - as an example of a service - the payment to military conscripts (compensating some of the costs of an individual in delivering a specific service). A highly perverse example of the second sort of retributions are agricultural price subsidies.

Determining negative parallels of the distinctions in forms of positive taxation, has shown that negative income tax (in the non-technical sense in which it includes the basic income), is not an isolated example of negative taxation. The impression that it stands out, is created by the suggestion that the state does not profit from pure forms of negative taxation. However, that is false. BIS has advantages for the state, because it will prevent negative consequences of poverty just as much or even better than the existing systems of social security.

It is useful, I think, to note in passing that the assumption that a citizen who pays positive pure taxes will also profit from doing so, is unfounded. It is only true in the very abstract sense that all non-anarchists assume that everybody in society is, under certain legal conditions at least, better off with, than without a state. However, it is certainly not true that someone who has a large income and pays a lot of income taxes, can also be supposed to have profited more from them than someone who is less fortunate. That he would do so is suggested when abstraction is taken from the specific nature of public expenditure and the profit that is being gained from it, or by appealing to an even greater abstraction like "the advantages of living in society"⁸ as a pretended justification to rob the rich. One's possibly substantial income may be related to public investments rather marginally only. One can think of a self-made artist, for instance. However, when he spends his money, he is going to buy products the production of which has been financed to a considerable extent, directly or indirectly, by tax money. In fact, this is an important argument in support of the thesis that consumption tax is more just than income tax (see below).

Even if it can be admitted that negative taxation is nothing exceptional, it might still be maintained that the problem of a negative income tax in the form of a BIS, is that it will also be enjoyed by people who are not poor or who do not respect PSP. However, many defenders of BIS argue that this is a price that has to be paid for dealing in a more efficient

⁸ As does Philippe van Parijs in *Qu'est-ce que c'est une société juste?*, Paris 1991, Ch. 3.

way than the present social security system with poverty and its consequences.

4. Efficiency and justice

In my opinion, the efficiency-argument for BIS is too weak as a matter of principle, even if it were valid. To think that the argument is sufficient, is to accept the dominating techno-pragmatic assumption that doing redistributive justice is just a matter of real (Pareto) or potential (Kaldor-Hicks) compensation for the losses caused by redistribution. However, there is nothing wrong with regarding justice or morality as more important than efficiency.

What is the basis of the claim that BIS is incompatible with PSP? The idea of moral autonomy and responsibility of the individual presupposes that one should live according to one's convictions concerning what is morally right and wrong. It may be that somebody has no moral objection to living off gifts from others. In fact, some people, like Buddhist monks, for instance, find this a morally praiseworthy way of life. However, this would be a dangerous form of life from a moral point of view, if it implied a dependency on such gifts for one's survival. Givers may have second thoughts and stop giving or set immoral conditions. And even without such demands, risking survival implies exposing oneself to strong impulses to act immorally.

Since BIS is not funded from gifts, but from taxes the payment of which is a legal obligation, it seems to be wrong to force tax payers to support people who would be able to provide for themselves if they were willing to work. The possibility that BIS would be more efficient than a social security system that includes an obligation to work if one can, does not imply that the PSP-objection against BIS becomes pointless.

Suppose you own a bicycle you are really attached to. One day, when you go pick up your bicycle, a broken lock sadly testifies to its own inadequacy. However, you find a note attached to it, stating: "Sorry, I took your bicycle. I needed it badly. But do not worry, I will put more than enough money on your account to compensate all your losses". You check your account and you find that the thief has been really generous. If he had asked you, for that amount of money you would have consented in his taking your bike. Do you have a reason to remain upset nevertheless? Of course you do! The thief interfered in your life and took your bicycle without asking you. Even if you would have consented in his taking your bicycle had he asked you, he could not know if you would have consented or not without actually asking. In other words, the reason you are upset is not necessarily your material loss,

which may, in fact, have been more than compensated. The reason is that the generous thief interfered in your life without the respect that is owed to you as an independent, autonomous person.

Although the bicycle example shows that morality cannot be reduced to utility, it may not seem to rebut the compensation argument in the case of taxation. After all, taxation is a form of forced payment to begin with. Nobody is asked if he consents to pay tax or not. However, the objection is not against taxation as such, nor against its amount, but against how it is spent. The objection is against tax money being given to people who do not really need it, even if that would imply a lower tax bill in the end. The objection is directed against a society in which loafing is condoned. In fact, it is difficult to deny that no efficiency-argument can take away the fact that BIS may undermine respect for PSP. However, would that not be a paternalistic argument? In the bicycle-example, it was the autonomy of the owner that was jeopardized. In the case of the tax payer, however, it would be the moral conscience of those who would assume, on receiving BIS, that it is alright to live off the efforts of others. Although one might investigate whether there is something wrong with such a form of paternalism, it is not necessary to do as the objection is not necessarily of a paternalistic kind.

BIS is given to everybody and it changes everybody's moral condition by removing the basic cause for the moral need to provide for oneself: the fear of being poor and being exposed to the risks of disease and starvation. That fear is not just a biological one, it is of a moral nature too. Poverty, disease and threatening starvation will make us more inclined to behave immorally. A morally good person will do his best to avoid getting himself - or bringing others - into such a situation because he will realise that it means great moral trouble. At first sight, this may seem like a strong argument in favour of BIS. However, precisely that would represent a paternalistic argument, because it would assume that one should take care to keep people out of trouble even if that trouble were the consequence of their own actions. In fact, BIS can undermine a morally responsible attitude as it may make us less morally careful because poverty and starvation will no longer be possible consequences of our actions. This objection to BIS is not necessarily paternalistic, because it can be maintained by way of an objection against the removal of an objective condition that determines the moral quality of one's own actions as much as of everybody else's who is not a saint. Strange as it may seem, BIS can make it more difficult to act as a morally good person.

If the objection on the ground of paternalism is unfounded, the question can still be raised if our objective condition is

not the same already. The prevailing system of social security in most of the richer countries has taken away the fear of extreme poverty and starvation. However, in this system PSP as such has not been rejected. On the contrary, it confirms PSP, although it acknowledges that one may get into a position of not being able to provide for oneself for reasons that have nothing to do with disrespect to it. However, if someone refuses to work although he is capable of doing so, he may still end up in a situation in which he cannot rely on social security payments.

As the argument against paternalism fails, a supporter of BIS will have to grab the moral bull by the horns. He must try and develop an argument for BIS that is based on the very same principle of moral autonomy of the individual as PSP itself. Moreover, it must be of greater weight. Has such an argument already been developed by BIS-supporters?

II. Justification of the basic income as an individual right

In the first part of this section I will take a critical look at Van Parijs' theory as representing the most elaborate version of what I will call the "fairness-approach" to BIS. It has its roots in a Rawlsian concept of justice as impartiality. Van Parijs theory will appear to have many defects. The most important objection is that it offers no convincing ground to do away with PSP, as Den Hartogh en Van Donselaar (see footnote 4) have argued. However, I will argue that this criticism is valid only within the ahistorical framework of a fairness-approach.

Den Hartogh himself does not appeal to fairness directly. He understands the latter as a conventional device to solve distributional questions in situations in which nobody can make a better claim than anybody else. I will argue that fairness cannot be constructed as a conventional solution when the value of the object to be divided has not yet been determined. Assuming fairness as a conventional solution, Den Hartogh then continues to follow an "idealist"-approach to BIS in order to circumvent his own objection against Van Parijs. He does not reject PSP, but he assumes that practically everybody who does no paid work, nevertheless does socially useful work. However, I will argue that even if this idealist assumption were true, it cannot outweigh PSP.

I will criticise both Van Parijs' conceptualist and Den Hartogh's pseudo-conventionalist idea that fairness would demand an equal right of everybody to the value of natural resources. This follows only from an abstract, timeless and non-economic concept of fairness in which ownership of natural resources is isolated from the historical process in which its value ap-

pears as the outcome of socio-economic choice.

Instead of fairness, I will propose auctions as the conventional device to deal with rivalling claims for as yet unexploited natural sources. There are three questions to be answered in this connection: (1) why to agree with auction-rights in natural resources?; (2) how to deal with later claims of those who were not able to express their interest at a particular auction, for instance, because they were not yet born?; (3) what about value increases in particular natural resources after an individual property right to them had been properly established ?

In dealing with the first question, I will argue, that one cannot simply presuppose that nature is "up for grabs" and has no immaterial, uncommodifiable value for man. The "fairness"-approach disregards the inherently political nature of questions concerning the relationship between man and nature. What is needed, and what I will try to provide, is a political theory of BIS strong enough to override PSP. It will include some remarks on a third non-fairness approach to BIS, the "republican-democratic" one, which sees BIS as a payment enabling active citizenship. I will not reject this completely. However, I will argue that it cannot provide an independent foundation for BIS as an individual right.

1. The fairness-approach

The prevailing approach to justifying BIS describes it as a compensation for rights that let their holders profit more from them than they deserve. I will call this the fairness-approach. Its champion is Philippe van Parijs. With him BIS is founded in what he calls a theory of "real-libertarianism". "Libertarianism" refers to the idea that each person is "owner of himself", whereas "real" refers to a structure of society in which "each person has the greatest possible opportunity to do whatever she might want to do"⁹. The latter condition implies both redistribution and absence of a duty to work. However, the first condition has a "soft-priority" over the latter, because the assumption of self-ownership implies that no "particular substantive conception of the good life is being privileged"¹⁰. This raises the following problem in connection with BIS: if everybody is owner of himself, how can taking what a person has produced from him for improving the position of others be justified? Would that not imply that the

⁹ Philippe van Parijs, *Real Freedom for All*, Oxford 1995 (OUP), p. 25.

¹⁰ *O.c.*, p. 28.

receivers are partial owners of the producers? This problem is solved by demanding a fair distribution of external resources or, as this is more efficient, a fair redistribution of the benefits of exploiting external resources. The external resources considered by Van Parijs are: natural resources, gifts and bequests, technology and employment rents.

Technology, as a source of rents that might be taxed to finance BIS, is rejected by Van Parijs himself. Technology is not exclusively owned except when protected by patent-law, which derives its justification from its (supposedly¹¹) general use in stimulating inventions.

We can also disregard gifts and bequests. I agree with Den Hartogh ¹² that gifts and bequests are not external goods. They are external to the receiver, but not to the donor. Taxing gifts and bequests would imply taxing altruism as well as discrimination of what is possibly, from a (first-order) moral point of view, the most praiseworthy form of disposing of one's possessions.

Interestingly, Van Parijs does not propose to tax natural resources via a property tax. In his view, all property in natural resources has to be acquired, in principle, from previously earned labour income, as property in natural resources should be taxed away, just as all other forms of capital, when given away or bequeathed. Therefore, it would be unjust to tax properly acquired ownership of natural resources.

However, Van Parijs is not blind to the considerable negative effects of a 100% taxation of gifts and bequests. He is willing to concede a lesser percentage that maximises the fiscal yield. He only does so grudgingly, however, as appears when he discusses capital tax. In itself, he admits, "there would be no justification to tax away the benefits deriving from the decision not to consume and to invest instead. But given that even an optimal taxation of material gifts (including bequests, I assume) and labour income would leave people's external endowments highly unequal, interests and dividends can also legitimately be subjected to maximum-yield taxation, at least provided that no forced savings occur and that the

¹¹ Supposedly, because it is highly questionable for most sorts of patents. See my article 'On Property without properties', in: G.E. van Maanen & A.J. van der Walt (eds.), *Property on the Threshold of the 21-st Century*, Antwerpen 1996 (Maklu), p. 210.

¹² Den Hartogh, *O.c.*, p. 132.

tax scheme can be adequately anticipated"¹³.

In fact, shortly before, in the context of self-employment, Van Parijs argued that the latter is usually dependent on capital-credit which will not be granted unless there is sufficient security. The result of this would be a capital-rent, because interest-rates will be lower than if there were free access to credit-markets. This rent would be comparable to the rent of efficiency-wages. Efficiency-wages include a sum that will make employed people afraid of loosing their job and will make them work harder or will save employers the costs of introducing and training new employees to replace old ones if these should leave their jobs for alternatives. However, apart from the question of how much taxation such capital and employment rents would justify, it seems to me that the argument fails both in the case of capital and of labour, because these "rents" reflect real transaction-costs, that is, structural costs of markets which cannot be discounted from an unknown equilibrium-price that would be reached if we lived in an ideal world with perfect information and instant adaptation. These can be distinguished from other, non-structural costs, like minimum- wages and union-monopolies, which, according to Van Parijs, also support his thesis that employment rents can justify (income-)taxation to finance BIS. However, as Claude Gamel has pointed out¹⁴, these arguments beg the question: why not, especially after BIS has been introduced, abolish minimum-wage legislation and forbid union-monopolisation of labour-markets?

The only source left for financing BIS, therefore, would be the rents from owning natural resources. However, they would be of no avail to finance a regular BIS from within Van Parijs' theory, as he assumes that its whole yield would have to be spent on financing people with "handicaps" defined in terms of Ackerman's "dominated internal activa". Ackerman's "handicaps" represent the jealousy-free residue of differences to be compensated from the point of view of a Rawlsian theory of justice as fairness. However, a much more serious objection against Van Parijs' theory of ownership of natural resources can be made.

Van Parijs correctly assumes that nothing follows directly

¹³ O.c., p. 119.

¹⁴ Claude Gamel, 'The Use of "Employment rents" for the Financing of Basic Income', *Paper for the 7th International Congress on Basic Income*, 10-12 September Amsterdam. Moreover, it would seem to me that jobs are not like natural resources in so far as they are internal from the point of view of the employer.

from the ownership of the individual of himself with respect to ownership of natural resources. However, he believes that there is an indirect way. Since ownership in itself cannot be real unless there are also secured property rights in external things, fairness demands, according to him, that each individual will have an equal right to the value of natural resources, assuming equal endowments.

Giving everybody an equal right in the distribution of the value of natural resources is not a self-evident principle. The value of a natural resource would seem to depend on the variable ambition to exploit it. For someone who has no ambition to do so at all, its value will be zero. It would be unfair to let such a person share in it. This is why Den Hartogh and Van Donselaar¹⁵ conclude that a basic income paid to such a person from tax money would represent a form of parasitism. In defense of Van Parijs, however, one might argue that each individual will at least be ambitious enough to exploit natural resources to secure his own survival and that there is nothing wrong with trading a real interest to more ambitious individuals who are willing to guarantee the survival of the less ambitious in return¹⁶. This is not a form of parasitism, because one will only be able to sell one's interest if a buyer thinks that the deal is profitable for him also, its price notwithstanding. However, the counter-argument can be developed into a criticism that applies to Van Parijs also: ambitions and the historical distribution of property rights are not independent factors.

The fairness-approach abstracts from the historical fact that the decollectivisation of ownership of natural resources has made a degree of specialisation of labour possible so that, in more developed countries at least, only a small minority of the population still earns its income from their direct exploitation. In a historical perspective one might argue, therefore, that the utility losses caused by individual appropriation of natural resources have been more than compensated by the new economic opportunities it has created. Historically speaking most "internal" activa are as much "externally" conditioned as natural resources are. Conversely, if one yields to the spatio-temporal metaphor of Lockean metaphysics, it is difficult to maintain that natural resources remain external as soon as they have been transformed into capital. Why would "owning" one's body and mind that have been trained

¹⁵ See footnote 8.

¹⁶ Den Hartogh's and Van Donselaar's objection to Van Parijs only holds if one rejects capital-rents in general. One may do so, of course, but it would bring our economies back into the Middle Ages with its prohibition on non-feudal rents.

to become an economic asset (internal activa) be fundamentally different from owning a piece of land (external activa) one has ploughed?

In contrast to Van Parijs, John Locke was well aware that the metaphor through which he was able to reduce property to acts of creation, could be stretched back into the past. Therefore, he had to struggle with Filmer's thesis of Adam's ownership of mankind, by distinguishing fatherhood from ownership, reducing both, in the end, to functionally distinct forms of trusteeship given to man by the Supreme Creator. Obviously, depending on how one conceives of the final nature of creation, one can mould one's theory of property. In both primitive and some modern environmentalists' holistic imaginations of the relationship between the individual and nature, for instance, nature has internal "activa" of itself of which human "activa" are an integral part. Instead of a transformative view of the relationship between man and nature, it will evoke the image of a balanced harmony in which individuals should integrate within the larger framework of nature.

From a post-metaphysical perspective, such controversies make no sense except as objects of second-order observations about the human mind. The human mind is obviously capable of variable conceptions of the relationship between itself and its environment. Man is not related to his environment in the way that the rest of nature is. It is from this reflection that one can make the otherwise paradoxical concept of "self-ownership" meaningful. The concept is paradoxical, because "self-ownership" would imply that an individual might also alienate himself. However, it is precisely what the concept intends to exclude. "Selfness", in a practical sense, refers to the very capacity of man to make up his own mind on what is in his own interest or not, and act accordingly. However, do animals, which, as we assume, can be owned, not do the same? They do. However, they cannot claim to be free in the sense that humans can. This is not because practically no animals can communicate symbolically¹⁷, but because their conditions of well-being are objectively given. They are practically the same for all animals of a certain kind, as they are not in the case of humans. From the point of view of the interests of animals, there is no reason to object to being owned as long as their objective interests are not in conflict with being owned. In the case of human beings who are *compos mentis*, such ownership is literally impossible for lack of an objective nature of their conditions of well-being. This is not the same as claiming that there are no objective conditions for human well-being at all. There are obviously some universal natural

¹⁷ And the few primates who can, do so at a very concrete semantic level only.

conditions of human well-being. However, human well-being is not only dependent on these natural conditions¹⁸.

This analysis is not meant to restore an Aristotelian argument from "is" to "ought". To claim that certain rights, like integrity of the body, individual property, free speech, etc., are "natural" in a functional sense, because they are necessary conditions for the realisation of man's nature, does not imply that they are "natural rights". In fact, our analysis shows that this cannot be the case since man's nature is precisely that he can have quite variable and incompatible ideas about the fundamental values and goals in life, nature and society¹⁹.

That this can be highly problematic can be illustrated by confronting Van Parijs' metaphysics with the alternative we have suggested. Thus, the Indian Chief who, not having read John Locke, resisted colonisation, was, from a modernist perspective, not only being "irrational", but, following Van Parijs, also "unfair" in so far as he wished to maintain the Indian's economically speaking "luxurious" wish to live in balance with nature as, predominantly, hunters and gatherers. However, that would seem to be a very perverse sort of accusation since it is precisely the immodest demands of the more developed parts of the world which make the taste of the less developed ones "expensive".

Traditionalism is expensive indeed, in so far as it risks to develop insufficiently endowments to allow people to survive in constant competition with others. Van Parijs might counter, therefore, that he assumed equal endowments and that redistribution will be affected by dropping that assumption. If people are seriously disadvantaged, according to him they should be compensated. However, in so arguing, he misses the point of the argument which is, that the value of nature is very different for different people and that it may be infinite, because their very survival is at stake or because people do not only stand in a material relationship to nature.

¹⁸ Psychological research on human well-being confirms that human happiness has everything to do with being able to live a life according to one's own's values and with pursuing goals set by oneself which are both challenging and within one's reach.

¹⁹ The premodern view is still defended today, however. See John Finnis, *Natural Law and Natural Rights*, Oxford 1980 (Clarendon). Finnis' theory has recently been submitted to a devastating criticism by Pauline C. Westerman, *The Disintegration of Natural Law Theory, Aquinas to Finnis*, Leiden-New York 1997 (Brill).

One must have submitted nature to commodification already to make comparative quantitative value assessments.

As regards natural resources there is simply a no-right situation, which implies that property rights can only be established through some sort of convention; and if there is no good reason, for some people at least, to agree to a convention, there simply is no complete solution for the problem of the justification of property in natural resources. The only thing that will be left for people who would like to subscribe to a certain convention, is to try and make a deal with people who do not accept it, provided that both subscribers and non-subscribers have an interest to come to a settlement of the conflict instead of fighting it out violently.

Interestingly, Den Hartogh, when dealing with the justification of ownership of natural resources, does not appeal to a concept of fairness directly, but to the idea of a conventional solution. This is a stable pattern of expectations that results from a series of decisions, so that earlier decisions are the context of those following. Conventional solutions refer, therefore, to solutions as **historical** processes and not as abstract schemes.

If one would like to solve the problem of how individual ownership of natural resources can come into existence as a stable institution, one must try to imagine under what conditions people who are excluded from such property would consent to such exclusion²⁰. It has already been argued why it is not self-evident that people would agree to a conventional solution, because it presupposes a common frame of value reference in relation to nature. It already demands a certain degree of moral relativism to accept a definition of nature as an object the value of which is to be measured in fractions and in terms of subjective opportunity costs, as is usual in a market society.

²⁰ One of these conditions would be that physical power to suppress other claimants is not sufficient to make a solution stable. Obviously, physical power is often a very successful method to stabilise property rights, however unjustified they may be. Nation states quite successfully enforce an exclusive property right of their natural resources on behalf of their citizens. The result is that one will find incredibly rich states next to very poor ones, depending on the minerals found within their territory. Since national property claims on natural resources are completely arbitrary from a theoretical point of view, the best way of spending public revenue from natural resources would be the financing of global international institutions. See Nico Schrijver, *Sovereignty over Natural Resources: balancing rights and duties*, Cambridge 1997 (CUP).

However, let us assume that such moral relativism is shared by those seeking a conventional solution. Would their solution be, as Den Hartogh suggests, that everybody would have an equal share in the value of natural resources? This, as Den Hartogh himself states, is impossible, because the market value of natural resources is not known until the property rights of market-partners have been established. However, if that is so, equal rights cannot be the conventional solution, because it demands a time-series of decisions of which each is determined by those which precede it. Den Hartogh then proceeds by simply ignoring this fundamental problem and proposes a second-best solution, which is an equal right in the value of the production accountable to natural resources, of which he estimates the value, via a fanciful procedure, at about 25% of all production²¹. Leaving aside what this sum should be, the question remains of a just **collection of** that part of tax-money. Why would someone who earns his money as a singer have to pay 25% of his income as if 25% of his production would be from natural resources? However, if, instead, the whole value of natural resources would be taxed away from their owners, nobody would be interested in owning them any more.

Den Hartogh's own criticism that an equal sharing of the value of natural resources would be unfair in the case of people who have no interest in exploiting them as such, implies that differences in the ambitions of people must be taken into account. Even though this argument will be seldom used at birthday parties, it is, strictly speaking, unfair that someone who does not like cake, gets the same piece of it as someone who is really fond of it. Possibly trade will be the consequence and the person who sells his cake can make a profit. However, trade reduces value because it involves transaction costs, and especially so if hold-out options exist.

Equal division in terms of value and in terms of objects only coincides if it is money that is being divided. Can the distribution of natural resources be seen like a fair distribution of money among its finders when nobody has showed up to claim to have lost it? In fact, Den Hartogh himself has argued that it cannot, because it would be unfair to include someone who is not interested at all in using a particular natural resource. He avoids this problem by parallellising his abstraction from the process of allocating property rights by an abstraction from the willingness to use a concrete natural

²¹ He reasons more or less as follows. We do not know the exact contributions of capital and labour. Let us therefore assume a contribution of 50 % of both. However, since capital consists of natural resources and labour again, we can repeat this procedure, which leaves 25% for natural resources.

resource to a willingness to work in general. As long as someone's work has some social value, paid or unpaid, he is willing to grant a claim in the value of natural resources, from which, he believes, BIS might be financed (see below).

The problem of assessing the value of a natural resource is a matter of estimating its opportunity costs, i.e. its value in terms of alternative economic choices. This can be done by means of an auction²², preferably a non-interactive one. A non-interactive auction is one in which the first bid is also the last and all bids are made without knowledge of those of others. This is a device to counter speculation. However, unless a realistic minimum-price has been set in advance, it does not prevent parasitism, because it still allows "safe bets", that is bids that are obviously too low and that are only made to acquire a share in the division of the spoils of the auction.

Obviously, the distribution of an auction-price should be related to the value of each offer, since that reflects the negative utility of not acquiring ownership. Nevertheless, it seems better to simply divide equally, however unfair that may seem in the face of real differences in expected utility, because speculative bidding cannot be excluded completely. However, there is a second reason not to discriminate between losers, which is that people who could not be present at the auction, for instance, because they were not yet born, might claim that it is unfair that the resource was sold out without their having had a chance to take part in the auction. This may seem absurd, because it would imply that no natural resource might be exploited until the very last man had been born. However, if the capital-value of the auction is saved and not distributed, everybody can profit from its rents.

Once a natural resource has been auctioned²³, it can be dealt with as capital in general. If its value increases after it has been acquired, that increase should be taxed like any other capital-value increase, provided that capital-taxes as such can be justified (see next section).

²² The theory of how auctions can become conventional solutions to establishing property rights is part of the body of theory concerning the so-called "tragedy of the commons". See Herman S.J. Cesar, *Control and game models of the greenhouse effect: economic essays in the comedy and the tragedy of the commons*, Berlin 1994 (Springer verlag).

²³ The question can be raised about the justification of appropriation when there is only one claimant. The answer is easy: if there is no market, the value is zero.

There is only one special feature about capital in the form of natural resources which makes them different. Some of them, like land, can also be used for the consumption of the owner. If its value then increases, it is reasonable that this consumption should also be taxed just as if the land had been leased out to someone else.

In conclusion I can distinguish my own position as a convention-theoretical solution from Den Hartogh's in two respects. The first is, that I do not assume that a conventional solution of the allocation of individual property in natural resources is generally acceptable in the sense that someone who would refuse to agree with it, is being irrational. People may refuse to consent in establishing individual property rights for good reasons. This is most important, because it follows that the problem of individual ownership of natural resources as such is insufficient to justify BIS and that it requires another convention that precedes it. However, and this is the second difference, for people who prefer to avoid fighting about access to natural resources, the solution they would rationally consent to is not an equal share in the value of natural resources, but a combination of an auction for property concessions and taxing value increases of natural resources in the same way as capital gains in general.

A few more remarks must be made on how Den Hartogh, in contrast to Van Donselaar²⁴, finally justifies BIS, his objection on the ground of parasitism notwithstanding. He assumes an "idealist" view, according to which most people work, even if unpaid. and the amount of real loafers would be negligible. However, we know nothing about how the attitude to work may be affected by BIS. Secondly, those who object to other people's living off their efforts will not necessarily think that they are less taken advantage of when people who undertake unpaid social activities define what they do as work, even if it is socially useful. The question will remain useful to whom? And why do those for whom it is useful, not pay for it, if it is indeed useful?

The labour of a housewife or a houseman is most useful. However, they are paid informally by their relatives, who profit from their labour. They may be underpaid, but that is something for which their relatives are responsible, not outsiders. Similarly, one may acknowledge that other forms of unpaid work can be useful for a larger section of society. However, why is that work unpaid if and to the extent that it is indeed useful? If the market fails to do so, the state should take its responsibility and compensate those market failures by

²⁴ Van Donselaar did not discuss the idealistic defense of BIS by Den Hartogh and restricted his criticism to Van Parijs.

hiring people. BIS is an economically clumsy way to do so, because it does not distinguish between a greater and a lesser social utility of work. The work a BIS-receiver may decide to do, may have a utility purely for himself or, if meant to be for others, it may only exist in his own imagination.

Therefore, although I have argued that Den Hartogh's objection against Van Parijs' theory as based on parasitism, does not hold, as transfer of property rights and motivation to work are not independent factors, his idealistic attempt to get around his own objection is also unconvincing.

2. Law as second-order morality (LSOM)

The assumption we have been making implicitly when developing our conventional solution by establishing property rights via an auction was that its value represents opportunity costs. But these are opportunity-costs in terms of market values. This implies that non-market values that a natural resource may be related to, drop out. To justify this, fairness-theoreticians like Van Parijs will invoke the neutrality-axiom, a fairness condition for competing theories of the good. It stipulates that since at least different internally consistent theories of the good can be defended, each individual should have an equal chance to realise his or her conception. Obviously this has implications if there is collective wealth to be distributed. We have seen that only natural resources can have a collective yield and that only if rivalling claims for first ownership are given. However, it is not self-evident that everybody would agree with auctioning natural resources. If natural resources as such are assigned a non-marketable, social or natural value, equalisation is impossible. Adherents of the fairness-approach disregard the possibility of subjective infinity of the value of nature and its resources.

Van Parijs' invocation of the neutrality-axiom manifests a confusion of the logical truth of moral relativism with its moral truth. The logical proof for moral relativism consists in the simple fact that there is no objective fact which is good or bad in itself in the way that a physical object can have a certain property or not. The fact that something is red or blue is relatively theory-independent. Our perception, even if differing between individuals (as when someone is colour-blind), does not, depend on our theories of the world. By contrast, our moral qualifications clearly depend on the theories of the good that we prefer. Moral relativism does not imply that moral debate is meaningless. We can err in our moral judgements and our moral theory can be inconsistent. However, there is no doubt about the fact that an infinite number of internally consistent moral theories can be thought out, the premisses of which can never be proven to be true or

untrue. It is very important, however, to distinguish between the second-order observation that moral subjectivism is a logical fact and the primary-order judgement that this logical fact is of moral relevance itself. The logical fact is about the provability of moral theories, not about their truth in an objective sense. The fact that we cannot prove a moral theory to be true, does not exclude the possibility that it is actually true. A lack of theoretical reasons to support the ultimate truth of one's moral theory, does not imply that one cannot have non-theoretical reasons for **believing** that one's theory of the good is actually true. The logical implication of moral relativity is that one can divide moralities in two kinds: those which take moral relativity into account and those which disregard it. Adherents of the latter content themselves with preaching for their own community. This is not necessarily meaningless, as one can hope for converts. More importantly, democracy as we know it is a device to cope with the fact of moral relativism. It allows a certain dominance to moral majorities, while protecting dissenters. However, this is a solution of a purely practical kind.

Can Van Parijs' theory of "real freedom for all" not qualify as a theoretical solution for the problem of moral relativism? A premise of Van Parijs' theory is that the capacity to be free, which is, to do whatever one would like to do, is income-related. However, this is not true for all conceptions of the good life. It is plausible that all of them accept elementary conditions of survival as functional premises of the good life. However, in some of these conceptions this is all that is needed to be free, as they define freedom as acting under no natural or social compulsion. Income above the basic level is irrelevant for their theory of the good, even if a wealthy life is seen as desirable, provided that this wealth is acquired without compulsion of others. If wealth would be taken from people who adhere to such a view, they would certainly be made to serve other people's conception of the good. It is one thing to admit that one's own conception of the good is not superior to anybody else's, but another thing to accept to be exploited and serve someone else's conception of the good. Refusing to be so exploited, does not imply, of course that another person would not be free to use his own means to acquire what he needs for the realisation of his conception of the good. Thus, because freedom is, above the basic level, not necessarily a matter of means, the neutrality-axiom demands the impossible. In fact, true neutrality implies a definite preference for moral theories which focus on nothing more than survival in society. The reason is that this "minimal" morality represents a common minimum. The rest is simply relative and a matter of belief.

If people are serious about wanting to avoid conflict in view of moral subjectivism, they can only keep others bound to

premises these people acknowledge themselves. In other words, in constructing a second-order morality one can apply Occam's razor. Obviously, someone who objects to holding nature up for grabs, would try to impose his strong metaphysical assumptions about the relationship of man with nature on people who make weaker assumptions. In contrast, objecting against a use of natural resources which would create a danger to survival, is consistent with a second-order morality, since its whole point is to make survival possible.

One might still try and defend Van Parijs' theory, because he restricts redistribution to value that has not been created by an individual. Redistribution, in other words, would not be a matter of exploitation then. However, all value is created by individuals and even natural resources' value only exists for those who are willing to invest in their exploitation. The whole idea that nature as somehow special as privately owned capital since it is simply "there", betrays a technocratic view of economic value in which its opportunity costs, its risks and its positive external effects are disregarded. Certainly, there can be a problem of first allocation with natural resources, but rivalling claims can be dealt with via auctions. Only the yield of such auctions can be used for collective purposes. However, it is totally unlikely that its value will even be sufficient to finance minimal social security even if it does not take the ambitious from of BIS. Even if that were different, it would be far from self-evident that the yield of auctions of natural resources should be spent on BIS. Why should it have priority over the still considerable number of public tasks which have to be taken care to secure survival in societies and of societies? Obviously then, another kind of justification of BIS is requested. Can the idea of a second-order morality, provide one?

I have argued that moral relativism is not a moral truth. People's belief in certain values and there preference for certain types of society can be so strong that they are not inclined to make any compromises. If people are under a duty to provide for themselves, but they disagree with the society they have to work for, they might even have moral objections against such a duty and prefer to keep alive with illegal means. BIS takes away the need to work for survival as well as a possible excuse for a criminal lifestyle. Thus BIS figures as a **pay-off** to those who cannot realise their conception of the good due to the constraints and limits which even a truly pluralist democracy will impose upon them. The argument for BIS as a pay-off is derived from the same principle of moral responsibility as the principle that each individual has the duty to provide for himself. However, it does not artificially separate the responsibility for work from its concrete historical and socio-political conditions. It is important to realise that even democratic political systems are forms of

domination, however tolerant and pluralistic they may be. The structure and territorial scope of democracies is relatively arbitrary and not neutral as far as the outcome of decision-making is concerned. Moreover, voting by foot by emigrating is very difficult for most people nowadays. An alternative society within one's own cultural community is often unavailable or inaccessible. Therefore, it is always possible and, in fact, often true, that people strongly disagree with the rules they are submitted to via democratic forms of decision-making. Even a particular democratic society can be hard to identify with for some people, because they make high demands for adaptation and conformity²⁵. In fact, proponents of BIS have often argued for BIS on those grounds in connection with the pressure that the obligation to work creates for people living on social security. Obviously, BIS allows people a minimal degree of participation in and responsibility for a society they may reject. In other words, BIS can be justified as a political pay-off to make people refrain from giving up a relativistic attitude. By not forcing people to contribute actively to a society which they reject, it takes away what might be a reason for revolutionary action, if only because refusing to participate in economic activity can no longer be used as an excuse for illegal forms of surviving.

Of course, identification with society and its political system is a matter of degree. Since a truly pluralist democratic society maximises freedom, it can be expected to minimise alienation. However, it would be naive to believe that freedom is valued by everybody. With some people, depending on their cultural backgrounds, freedom is a source of great anxiety. Free societies are usually also highly competitive and competition implies material and social risks for those who turn out as losers in the competition. BIS will reduce this fear by guaranteeing minimal social security as well as by destigmatising failure by making it less conspicuous.

BIS as a back-up for social cohesion in a democratic society has already been advocated. However, this was in view of a different kind of support, although it is not unrelated to the one we have just developed. BIS can also be seen as a means to

²⁵ I see a truly pluralist democratic political system as the **political** expression of "law as second order morality" (LSOM), as it maximises the possibility to live according to one's own conception of the good without getting into conflict with the same right of others. I have recently analysed the structure of such a system in a soon to be published article 'Democratic Deficits or Deficits of Democracy? Transition to, in and from democracy in Europe', in Werner Krawietz and Csaba Varga (eds.), (title as yet unknown), *Beiheft Rechtstheorie* 1998 nr. 3, Berlin 1999 (Duncker and Humblot).

realise the republican ideals of democracy. BIS invites dissenters to put as much energy as they want in using democratic means for convincing their fellow citizens of the necessity for change. BIS enables every citizen to participate in politics, full time if deemed necessary.

In a complex modern society, politics and public administration have become highly professionalised and bureaucratised. This explains why the alienation between political parties and citizens has grown and why unofficial politics have become more and more important in comparison to official politics²⁶. Obviously, our "risk-society" needs much political information and control. Therefore, from the point of view of democracy, BIS cannot only be regarded as a means to make dissenters live with a form of political domination they reject, it can also be seen as a citizen's financial credit for political activity. This is especially true for those who are dependent on the existing system of public social security. The obligation to work and the risks of losing social security if they do not comply with the conditions that authorities impose upon them, can operate as restrictions on political freedom. In fact, the fear of losing one's job without a right to social security, may already block the freedom of political action. According to Ralf Dahrendorf, this would be incompatible with republican-democratic ideals of equality and political freedom²⁷.

The argument for BIS from republican-democratic ideals is much more attractive than the idea of BIS as a "pay-off". Nevertheless, I cannot accept the republican arguments for BIS as more than secondary. They cannot provide an independent justification of BIS that overrides the objections based on PSP. What about those who do not participate in the democratic process on principle or who do not participate in any way although they do not have any of these objections, but who simply do not care? And why give a basic income to those who are obviously rich enough to live off their capital if they would like to spend their time in republican activities?

Therefore, the republican argument, attractive as it may appear, cannot stand on its own feet, unless one first accepts the "ugly" side of BIS, its being a "pay-off". If one does, the republican argument can be integrated easily. Obviously, if opponents of the democratic republic are given the opportunity to voice their opposition, provided they do it peacefully, the supporters of that ideal should be given an equal

²⁶ See footnote 25 for the scientific support for this thesis.

²⁷ Ralf Dahrendorf, *The Modern Social Conflict*, London 1981 (Weidenfeld), p. 177.

opportunity to defend it.

3. Conclusion

Let us now, in conclusion of this section on the justification of BIS as an individual right, compare our approach to it with the one followed by Van Parijs. A first important advantage of our approach is that we do not have to deny PSP. However, we have based this duty in a more general and broader duty to take moral responsibility for one's life. PSP does not necessarily have priority within this broader responsibility. Under particular social-economic or political conditions it may demand, depending on a person's world view, not to fully participate in society and contribute to it through paid work.

The second advantage is that we can explain why BIS would have to be a truly **basic** income and not more than that, as Van Parijs would prefer. I think this is an advantage, because against the prima facie intuition that everybody has to provide for himself, it is hard to explain why even more than just the minimum necessary for social survival would be covered by BIS. I have pointed out that BIS should take away a possible justification for illegal behaviour on the grounds of the necessity of survival in connection with one's morally motivated refusal to work under certain socio-political conditions.

That BIS should be a basic income only, does not imply that it should have the same level for everybody. The needs of people for survival can differ. For instance, some physically handicapped people will need extra means if they are to survive without any other sources of income.

A third advantage is that we are not restricted to taxing natural resources to finance BIS. It can be financed from all other sources of which taxation can be justified (see below).

A fourth advantage is that although BIS was disconnected from being financed exclusively from property-taxes on natural resources (considering that all other sources of taxation Van Parijs suggested are untenable), we have nevertheless identified a basis of taxing natural resources. It consists of VAT in two forms: a 100% VAT for the establishment of original property rights when there are more than just one claimant, and later an ordinary tariff for value added.

The practice that VAT is not paid back when the value of an object goes down after being sold, would explain why there would also be no such claims against the community when the value of natural resources fall under the price for which they have been acquired from the community. However, this is only the case if we can explain the non-reimbursement of VAT in

case of price-drops in general. If VAT were the fiscal form through which property rights in natural resources can be justified, one can presume that a more general justification of VAT will throw a clearer light on the relationship between property rights and taxation in general. Another question that arises is, whether BIS might play a special role in the justification of VAT. These are the subjects of, respectively, the third and the fourth sections of this paper.

III. Principles of taxation

1. The principle of equal charges and benefits

Taxation is subject to the general principle of equal public charges. However, as we have seen, these can be positive and negative. Therefore one may formulate it better as the principle of equal charges and benefits. Benefits from public expenditure can be diffuse or specific. In so far as they are specific, they should be subject to charges. Impure taxation should also be specific, as connected to compensating negative effects of individual behaviour. General taxation is unavoidably class-biased in some respects. Expenditure for social security is by its very nature more to the advantage of the poorer social classes. This also is the case in a society with BIS, because it will represent a larger part of their income. Public expenditure for education and culture, however, is usually more profitable for the rich. The advantages of public investments in infrastructure, justice and defense, are by and large related to income. Therefore, if income is taxed proportionally, the scales will be roughly in balance, although the principle may demand some further refinements (see below).

Even if the advantages of public expenditure would thus be roughly in balance, one may still question whether the charges of taxation are divided equally. An argument that can cast doubt on this, is the idea of the negative marginal utility of income. This is often rejected on purely logical grounds, because it would imply interpersonal and intertemporal utility functions. However, I do not think that these objections which are valid on an individual level, are also conclusive if and in so far as fiscal justice has to be established on the group level only. Even if e.g. a negative marginal utility of income can not be established on an individual level, it might still hold as a generalisation. Legal justice can often be an approximative justice only, and we should therefore seriously consider whether there is, as so many people believe, a justification for progressive income taxation.

2. Progression in income tax

A first reason to think that the marginal utility of income decreases, is that standard neo-classical economy would predict that people will work less when income increases, because the value of leisure will increase. However, the direct evidence for this thesis would seem to indicate the contrary rather, because people in general cannot be observed to work less as their income per hour increases. The income effect is many times higher than the substitution effect. It is true, of course, that as income increases, the work as such tends to become more attractive, but the relative impact of that factor is unknown²⁸.

The second argument is based on a well-known paradox, discovered by Kahneman and Tversky, consisting in the fact that people, in general at least, tend to be loss-averse²⁹. People prefer to avoid a small chance of losing a certain amount of money over a much greater chance of gaining that amount. Can this "irrationality" be explained as indicating a decreasing marginal utility of income? It certainly cannot because Kahneman and Tversky did not find a decreasing loss-aversiveness with increasing income. Nor do others, as far as I have been able to establish from handbooks on economic psychology. In fact, gambling is more typical of the lower social classes³⁰. However, this may reflect a lesser sense of control over one's life and seeing it being governed by chance. Moreover, there is only a gradual distinction between gambling and, as richer social classes do more often, investing money.

A final reason to suppose that the marginal utility of income decreases, is that saving-rates increase as income increases. However, increasing saving-rates only indicate that, as income rises, saving becomes more attractive than direct spending. Again, this may also be explained as refuting the thesis of the decreasing marginal utility of income, because saving will usually aim at a greater income in the future. In fact, not only do saving-rates increase with income, so do de-saving rates³¹. What these empirical data reflect is that richer people can better afford to develop longer term consumption plans. Needs are **not** independent of income level therefore.

²⁸ Stephen E.G. Lea, Roger M. Tarpy & Paul Webly, *The Individual in the Economy*, A Survey of Economic Psychology, Cambridge 1987 (CUP), pp. 162-164.

²⁹ D. Kahneman & A. Tversky, Prospect Theory: An Analysis of decision-making under risk, *Econometrica*, 47 (1979), pp. 263-291.

³⁰ Lea, Tarpy & Webley, *O.c.*, p. 271.

³¹ *O.c.*, p. 230.

Empirical studies show that the need for income is highly dependent on reference groups, which are, in general, the group of one's own income-bracket³². The most likely assumption is, therefore, that the marginal utility of income is at least constant as a **proportion** of income. A proportional income taxation would therefore be just in terms of the disutility of fiscal charges³³.

There are other arguments against progressive income tax. Income tax only takes financial costs of gaining an income into account, and not non-financial sacrifices like taking risks and working hard. Someone who works only half-time when nothing but a preference for leisure keeps him from working full-time, will not pay more or less income tax than someone who works full-time or even overtime, and makes the same amount of money. Another way of expressing this is, that income tax systems do not tax a preference for free time. It would be very hard to do so, of course, because it would presuppose an objective standard for "full time work". Moreover, it would contradict a deep rooted sentiment that we are owners of our own time and that we have no obligation to work, at least as long as we do not ask society to support us to do so. In fact, if one would tax free time, one would also have to tax reasons to work under one's earning capacity. A surgeon who prefers to make his money as a professional painter, would have to be taxed for his preference to be poorer but more satisfied about his work. Nevertheless, the fact that non-financial sacrifices are not discounted in income tax, does not only count as an objection to progressive taxes, it is an argument against income tax as such. In fact, that is not the only objection against income tax.

3. Income and corporate tax vs. consumption tax

Many income tax systems with progressive tax rates are marred by possibilities of regressive tax deductions. However, this is not a structural feature of income tax. A more structural problem for such systems is at stake when income is used to create income at a later time, for instance, through pension

³² Robert H. Frank, *Choosing the Right Pond: Human Behavior and the Quest for Status*, Oxford 1985 (OUP).

³³ This assumption implies that redistribution of income from richer people to poorer people increases wealth in utilitarian terms, provided that it is not compensated by loss-aversiveness. However, that would still justify redistribution only if one accepts the utilitarian principle that theft is justified if the thief needs what he stole more than the owner.

insurance. One might argue that insuring one's pension is irrelevant for income tax. One's preference to consume income later is just as irrelevant as any other decision to save instead of consuming. However, the future income should then not be taxed except in so far as it exceeds what has been saved. One might also argue that pension-insurance spreads income more evenly, and that it is a justified form of avoiding unjust taxation that results from the combination of unequal income in time and changing tax rates. In fact, tax systems usually allow an administrative spreading of income over a limited number of years in order to avoid unequal taxation caused by progressive tariffs. However, the usually limited duration of that term is arbitrary. Moreover, if such spreading is justified, any form of tax-exempted saving to compensate unequal income over the years would be justified. However, it would be hard to know whether savings will be used to do so or not, because it is often difficult to predict one's future income. Another way to make the same point is that the value of income differs depending on whether it is regular or irregular, whether it is protected against inflation and whether it can be used for consumption or not. The tax man cannot know when and to what amount acquired income can be spent more usefully. That is why a consumption tax system would seem to be more just as an indicator of spending power.

That an income tax system, in contrast to a consumption tax system, is not neutral towards consumption and saving is important in this connection. Suppose that A and B have an income from work of 500 dollar during two consecutive taxation periods. Let us assume a tax rate of 50% and also that A consumes his income completely³⁴. A will then be indifferent to whether he would be under an income tax system or a consumption tax system. Under both systems he will pay half of his income to the tax man. Assume that B, in contrast to A, saves his income of both periods at an interest rate of 10%. In an income tax system, B would have saved 250 dollar. His income in the second period would therefore be 550 dollar, which will lead to a tax sum of 275 dollar. Over two periods B will have paid 525 dollar therefore. However, would B have been subject to a consumption tax after the second period, when he spends 1100 dollar (1000 dollar regular income plus 100 dollar interest), he would have to pay 550 dollar in tax. The direct value of A's tax duty is 500 dollar. So is B's in case of a consumer tax system (his income minus the value of his savings). However, if he were subject to an income tax system, the direct value of his tax debt would be 525,50 dollar (500 dollar of his regular income plus 25 dollar tax on interests

³⁴ I have taken the example from S. Clossen, *De belasting van de toekomst?*, Deventer 1978.

minus 10% of the latter amount that represents his sacrifice in saving that amount).

Not to discriminate between consumption and saving makes sense economically, because they represent each other's opportunity costs. However, one should realise that the rationale of a consumption tax system implies not only that the rewards for the sacrifice of saving, but all capital gains remain untaxed until they are used for consumption, including the consumption of labour, buildings, machinery, etc. This does not imply, however, that capital gains as such will become greater at the expense of generating income via other means. The taxation of capital gains is only shifted to the moment the gains are consumed. The advantages of a consumer tax over capital tax are that latter are no longer hidden in consumer prices and that the choice between alternative combinations of production factors, which are usually not equally taxed, will no longer be determined by fiscal motives.

Furthermore, in absence of a capital tax, the losses caused by mistaken investments can no longer be deducted from profits. In other words, the taxman will no longer subsidise bad entrepreneurs. Moreover, one does not have to account for the value of stocks, debts, depreciation of capital as well as for reserves. All the fiscal problems created by differences of taxation depending on the legal form of firms, and of buying, merging and liquidating firms, will be over, just as the difficulties created by bonus-shares and agio-payments.

Nevertheless, it must be admitted that without taxing interests and capital gains, differences in wealth will increase because saving will become relatively more attractive than consumption. The rationale of a consumption tax would also seem to be incompatible with taxing gifts and bequests. However, that is a matter we have already dealt with when discussing Van Parijs' theory. We concluded that there is no ground for the state to claim a share of A's willingness to give or bequeath something he owns to B. Nevertheless, in the absence of an inheritance tax, differences in wealth will also increase. However, as saving rates increase with income, high saving rates will stimulate cheap credit and cheap credit will stimulate investments and employment. Moreover, poorer people will also profit more from BIS as it represents a larger proportion of their income. In other words, one should not conclude too quickly that a BIS in combination with a consumption tax would have a negative effect on real income differentials, quite apart from the fact that they are not necessarily objectionable from the point of view of justice.

4. Direct vs. indirect consumption tax

The question remains whether consumption tax should have a direct or an indirect form (VAT). The direct form has some important disadvantages. The first is that it is less controllable, because it is not a source-tax. The second is that it demands a fiscal control over citizens' spending that goes much further even than in an income tax system. The tax man will have to estimate what one's possessions were at the beginning and what at the end of the year, as does the tax payer who does not want to be confronted with too great a debt to the state at the end of the year.

Fiscal control will also have to face special problems. Whenever things are bought on credit, they do not have to appear in the fiscal administration of the debtors with the effect that money that has actually been spent already may appear as still unspent. Payments from bank accounts that are kept abroad will be even more difficult to control. All these considerations are arguments for an indirect consumption tax in the form of VAT.

VAT has a further advantage over direct consumption tax. It makes repairing much more interesting. A direct consumption tax is indifferent to whether a product is new or not. VAT used as the only form of pure tax would no longer have the disadvantage of the present VAT which is also calculated over the other fiscal components that are a part of the price one pays. If these components have different tariffs, VAT reinforces the market-disturbing effect of these differentials.

Finally, VAT has the great psychological advantage of indirect taxes in general. They are not paid separately by the consumer, for whom tax appears as just another price factor. And in so far as the consumer is aware of the tax-component, it has a frame which suggests that the consumer is paying tax out of his own free will as much as he or she is free to buy or not to buy a particular good or service³⁵.

IV. The coherence between VATS and BIS

We must now consider, on the one side, how our critical analysis of the justification of taxation-systems in general are related to the justification of BIS and how, conversely, a BIS contributes to the justification of VATS.

If BIS were also financed from income taxes, it would affect employed people as a cheap trick. However, if it is financed

³⁵ See A. Tversky and D. Kahneman, The Framing of Decisions and the Psychology of Choice, *Science* 1981, 211, pp. 453-458.

from an indirect form of taxation like VAT, taxes are hidden in prices.

When considering the choice between a direct consumption tax and VAT, social security considerations support the thesis that VAT is to be preferred over a direct consumption tax in combination with BIS. Often social security will only be provided if one's capital and savings are below a certain level. The implication is that two people who have generated the same amount of income over a number of years, can have received very different amounts of social security, depending on whether they were forced to live from their capital and savings or not. In fact, the very fact that one had to live off one's capital and savings may have prevented the possibility of having an income from which earlier social security payments might easily have been paid back. This is another good argument to prefer a BIS over any other social security system, including a negative tax system.

We have seen that a consumption tax system is more in conformity with the idea that taxes should be related to spending power. It should be kept in mind, however, that it is only consumptive spending power that counts. Saving, in whatever form, was interpreted as a preference to spend later. However, when deconstructing income tax we saw that income tax systems cannot take differences in efforts into account, nor preferences for free time or for more interesting work instead of for better paid work. It can also not account for differences in the willingness to take risks. Finally, in par. 2.3 we have already encountered a most successful but self-made artist in whose case it would be difficult to explain that his high income had much to do with public investments made in his education.

If, however, one defends the idea that people with equal incomes should pay tax equally, one must look for another justification of taxation than spending power. A consumption tax does not only have the advantage of mirroring spending power more realistically, it also suggests that tax is a price for consumption. But what is it a price for? From an economic point of view one can see taxation as a charge for the public production of collective goods or of merit-goods, the presence of which contributes to the production of other goods and services. Admittedly, that relationship is also unspecific, because it is usually difficult to tell to what degree public investment has contributed to which products and services. The paintings of our self-made artists are as little the product of collective investment as is the talent of their author. However, disregarding such real differences is quite different in the case of VAT, because everybody spends his income on many different goods and services, so that the plus and minus of the collective component of each of their values will

compensate each other by and large. Moreover, VAT can be differentiated when differences in the contribution from collective means are plausible. Via such differentiation, VAT also allows a citizen a very indirect say about what taxes should be spent on. If tax payers prefer goods and services the production of which presupposes greater collective investments, they will also pay extra tax when buying those products if VAT-tariffs took such differences into account.

The principle of equal treatment is not just an economic matter. If that were the case, people who do not pay for their own basic income via taxes, would have no claim whatsoever. It also expresses the neutrality of the state towards styles of life, independently from whether they go along with high or no yields for the state. Suppose that it would be profitable for the state to tax higher income brackets less, because the loss from the tax rate would be compensated by the amount of extra production that is caused by this lesser rate. However, the neutrality-principle forbids this, just as it allows support to people with a basic income just as a pay-off.

VAT is not only levied on value produced from natural resources, but also on value produced by labour. For an employer, the input of capital rather than labour is a matter of relative marginal efficiency. It is indifferent to him what his inputs are from a technical point of view. If labour can replace the input of natural resources or a piece of machinery so that efficiency is enhanced, a rational employer will do so, and the reverse as well. For an employer, labour is as much a natural resource as real natural resources. Although someone who works for an employer obviously has an interest in being employed, an employer takes a risk by investing in labour as much as when he invests in natural resources or machines. However, if VAT in the case of natural resources is paid as a price to the community, how could it be justified to impose VAT on the employment of labour, given the fact that an employee, unlike a non-human natural resource, owns himself?

For society, that makes all sorts of public investment to allow labour to be used as efficiently as possible, the decision of an employer to hire labour also represents a risk of public investment. To the extent that the potential value of labour has been created via public investment, labour is "owned" by society vis a vis employers. These public investments are equally profitable, of course, for labour. However, wage-earners will be taxed for this when consuming their wages. The wage they are paid includes a part through which they ultimately also repay, as consumers, the employers for their labour VAT-costs, at least as long as employers manage to sell their products and services at cost-price (including VAT-costs).

Is the justification of VAT-ing labour not inconsistent with our objection against income tax on the grounds that income might be quite unrelated to public investments in the skills that go into a particular sort of production of goods or services? The answer to this criticism is the same as in the case of products and services which may contain differential value derived from collective sources. Minus and plus in the collective part of labour value hired by an employer will often cancel each other out more or less. However, there is nothing against differentiating VAT-tariffs on labour depending on the amount of collective investments that they require for education. In so far as un- and less skilled labour will demand proportionally less investment, it is only just that it will be taxed less. By being taxed less, it will also become more competitive. Differentiating labour-VAT would help to compensate the often high public investment made in people with higher education. In fact, it might also help to compensate the structural trend to overeducation and overqualification created by the fact that the costs of higher education are, at present, often not paid by those who have been enabled to earn a higher income thanks to the public investment which made their education possible.

Speaking of society "owning" labour in the sense that it has a legitimate interest to be used as efficiently as possible, may suggest that society might also expect labour to use its productive potential as productively as possible. However, that conclusion would seem to go directly against our whole justification of BIS. In fact, there is no contradiction involved. The logical structure of our justification is, that **if** an employer puts in labour, **after it has freely decided** to be employed, the VAT-risk of an eventual misinvestment of the value of labour, in so far as it has been created through public investment, is to the employer if his VAT-payments would be higher than his VAT-receipts. The state should avoid subsidising bad entrepreneurship. Labour appears on a market. Hiring labour has opportunity costs for other employers. A good employer will not hire labour in too large quantities and at too high a price. If he does, he is wasting labour force that might have been hired at a lower price by another employer. The logic of not repaying VAT in this case is precisely the same as when a natural resource is bought by someone who makes imprudent investments and thus wastes the possibilities that others might have had by buying the same resource at a lower price.

Not only is there no contradiction involved in arguing that an employer owes society VAT when consuming labour, the coherence of that obligation with BIS should also be noted again. Because of BIS, nobody is, as an individual, forced to become an employer in order to secure his survival. At the deepest level the coherence between BIS and VAT is based on the fact that

legal responsibility only starts once survival is secured. That is the only service of society that is gratis. If one decides to profit more from collective investments, one owes tax, irrespective of whether one consumes or risks wasting means through entrepreneurship which owe their value, to a certain extent at least, to collective investment.

After this analysis of the nature of VAT on wages, there is one more remark to be made, which hopefully also puts the yield of property auctions in the right perspective. One might question that solution, arguing that the price for a property concession should also be subjected to VAT. However, the value that is added by that concession is created by the state itself, assuming that the value of exploitation was minimal before an exclusive right was established. The state can therefore rightfully claim all the value added which is paid to it by the first owner. If the state would impose VAT, it would have to impose it upon itself, which would obviously be pointless. Moreover, even if it would try to impose that VAT-charge on the first owner, this would be pointless, since he would then discount it from the price he offers or from the VAT he will have to pay on the products or services he plans to produce by exploiting his natural resource.

Now that we have argued why the price of first property rights in natural resources can be seen as value added by and therefore due to LSOM, it is also easy to see the coherence of BIS and VATS at its deepest level. BIS is nothing but negative VAT, a price for the value one adds by complying with the law - property law and other law - of a society based on second-order morality.

V. Administrative qualities of a VAT-system with BIS

Now that the coherence between the justification of BIS and VATS has been demonstrated, the question of its administrative effectiveness and efficiency must be faced.

As far as efficiency is concerned the relative simplicity of a mono-tax must be emphasized. One can get rid of a whole lot of public and private experts in fiscal law as well as a considerable amount of specialisation among them. With the exception of owners of natural resources, only (self)-employed people would be taxed. Moreover, all the problems of assessing personal income and personal wealth would become irrelevant. So would business accounts, except for the assessment of transactions and payments.

As far as effectiveness is concerned, I would like to make one preliminary observation. The society that would be created by a combination of a VATS and BIS would differ so much from the

existing one, that the public attitude towards tax payment might differ considerably from the existing one. If the system we propose is more fundamentally just and more transparent, it may turn out that tax will be less seen as a catch as catch can fight between the state and the tax-payers³⁶.

Another obvious advantage is that VAT is an indirect form of taxation. VAT has already become more and more important as a source of taxation, because it is experienced as a part of a price that is being paid. It does not suggest extortion as much as direct forms of taxation do, because it is relatively impersonal. At the same time it may also appear to be personal in another respect. As much as one is free to buy a product or a service one may appear to be free to pay the tax that is included in it. This may be a useful framing effect.

The VATS we have proposed is a mono-tax. Mono-taxes are often objected to because the high tariff that it implies, would make fraud attractive, whereas the limitation of the sources of taxation would offer the tax man less possibilities to discover fiscal fraud. However, the VATS we have proposed will have several sources, as it is levied at each transaction in the production chain, including the payment of wages.

Especially for non-employers and non self-employed in the lower income brackets, VAT has the great advantage that one will not have to pay tax afterwards. Otherwise, there would be a considerable chance of incurring a fiscal debt one would not be able to pay except from one's basic income. Finally, although it may be an advantage to have many sources of taxation to reduce the chance of fraud as determined by the tariff, its complexity and untransparency will offer more opportunities for fraud at the same time. The system we have proposed does away with almost all sort of existing taxation except VAT. Maybe even more important than opportunities for fraud, however, is the large number of opportunities that the present complexity of tax systems offers to evade taxes, because loopholes cannot always be avoided even if they were not deliberately created. Tax deductions do not figure at all in the VATS proposed here.

When it comes to sanctioning fraud, an obvious advantage of the combination of VATS and BIS is, that the forfeiture of the

³⁶ Discontent concerning the tariff may and will continue, of course. It might be reduced if the transparency of public expenditures would increase so that discontent concerning particular expenditure could be expressed in a more articulate way than the present political system allows. See Bruno S. Frey, *Ein neuer Föderalismus für Europa: Die Idee der FOCJ*, Tübingen 1997 (Mohr-Siebeck).

right to a basic income would seem to be a powerful additional possibility to sanction tax fraud.

VAT has advantages from the point of view of control also wherever data about stockflows are available or open trade takes place. Its weaknesses are concerned with services, but that is a problem which does not differ from the present situation, both as regards VAT and "black" labour. Another problem in connection with VAT are international trade and services. The present system is such that VAT already paid by an exporter will be reimbursed to him, whereas importers may sell for a price which includes VAT, which they can put into their own pockets, making sure they have disappeared before the tax police could easily arrest them. Another trick is pretended export, when products are in reality illegally sold at much lower prices without VAT.

A partial solution of this problem would be not to reimburse exporters, which will keep all the VAT that was already paid for previous production in the country from which export takes place. Only the value added by the importer then remains to be a problem, since it is reasonable that the part of the value added by the importer will be taxed in the country where the product is sold. I cannot see why VAT should be treated differently in any way from any other form of taxation that is now, by and large, an element that goes into prices, like the income tax part of labour costs, for instance. In fact, it is another advantage of a (mono-)VATS that it does not double-tax, as VAT is now still calculated on prices in which the costs of other taxes are by and large included. It again implies a discrimination of labour as the relatively highly taxed production factor.

The solution proposed implies that international competitiveness will also depend on VAT-tariffs. Once more, I cannot understand why this should be allowed in the case of all other forms of taxation, like income tax, which has its effect via labour prices, but not with VAT. The effect of this show of neutrality is that states will now compete via corporate taxation or even via privileges, special tariffs or subsidies for foreign investors. Such practices that are very annoying both for foreign states³⁷ and home competitors, would also be over a with a (mono-)VATS. On the other hand, that states

³⁷ My colleague Ton Daniëls has calculated that such competition costs a lot in fiscal revenue to big countries since the losses of lowering tariffs to small countries are compensated by the gains from the influx from big countries which usually have much more capital too. See Ton Daniëls, *Belastingconcurrentie en internationale fiscale coördinatie: EU vs. OESO, Forfaitair*, nov. '98.

would also compete on the basis of their tax costs, might stimulate an efficient use of tax money. It does not imply that there would be a tendency to an ever lower tariff. Of course, a lower tariff will be attractive for investment in itself. However, because too low public investment may damage the quality of the infra-structure as well as the quality of labour and its living conditions, there is no reason to expect a domino-effect of ever lower tariffs. It is true, however, that there are also public duties to expenditure of which the productive effects are absent or low, like, for instance, assisting the poor.

Finally, the relation between VATS and the financing of BIS should be considered. When discussing the justification of ownership of natural resources, what is paid owners to justify their rights should be kept as capital of which only the rents should be distributed via BIS. Obviously, financing BIS from public capital funds is the solution to stabilise financing BIS and make it less vulnerable to economic fluctuations. I do not have to argue this case any further as I can refer to Edwin Morley-Fletcher's paper for this matter³⁸.

³⁸ Edwin Morley-Fletcher, Opening Address of the 7th International Congress on Basic Income, 10-12 September 1998, Amsterdam.